



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/434,779	05/04/95	SIEVERT	1502

35M1/1203  
MERCHANT GOULD SMITH EDELL WELTER  
AND SCHMIDT  
3100 NORWEST CENTER  
MINNEAPOLIS MN 55402-4131

KENT EXAMINER
---------------

ART UNIT 504	PAPER NUMBER
--------------	--------------

DATE MAILED: 12/03/96  
12

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

08/434,779

Applicant(s)

Dick J. Sievert et al.

Examiner

Christopher Kent

Group Art Unit

3504



☒ Responsive to communication(s) filed on Aug 29, 1996

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 17-49 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 17-49 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Aug 29, 1996 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 9

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

*C. Kent*

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 08/434,779

-2-

Art Unit: 3504

The following office action is in response to patent examination application serial number 08/680,919, filed on 07/16/96.

Acknowledgement is made of the receipt of the response filed 08/29/96. Claims 17-49 are pending on the merits.

**NEW FIGURES 3B AND 6B**

The proposed addition of Figures 3B and 6B is acceptable. The amendment in the "Brief Description of the Drawings" has been entered. Support for these additions is found in application serial number 08/322,357, now U.S. Patent Number 5,490,363.

**OBJECTION TO THE DISCLOSURE**

The disclosure is objected to because of the following informalities: the element 44 of Fig. 12 is not referenced in the specification. Appropriate correction is required.

**REJECTION - 35 U.S.C. 112, SECOND PARAGRAPH**

Claims 18, 19, 24-26, 31, 32 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

Art Unit: 3504

which applicant regards as the invention. Claims 18, 19, 24-26, 31, 32 and 36 recite "said protrusion". This limitation is indefinite since the claims from which these claims depend recite at least one protrusion. Referring back to a "said protrusion" results in confusion as to which of the possible plurality of protrusions reference is being made.

#### **BASIS FOR NON-STATUTORY, NON-OBVIOUS DOUBLE PATENTING**

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

#### **REJECTION - NON-OBVIOUS, NON-STATUTORY DOUBLE PATENTING**

Claims 17-49, as understood, are rejected under the judicially created doctrine of double patenting over claims 17-49 of copending application serial number 08/680,919.

Serial Number: 08/434,779

-4-

Art Unit: 3504

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: the block for construction of a retaining wall, and a retaining structure. No restriction requirement has been made in application serial number 08/680,919 which would prevent applicant from claiming the same invention.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

#### **OBVIOUSNESS DOUBLE PATENTING**

Claims 17, 18, 21-27, 30, 31, 33-41 and 43-49, as understood, are considered to be provisionally rejectable over the claimed disclosure of application serial number 08/322,357, as described in the office action mailed 04/25/96.

Serial Number: 08/434,779

-5-

Art Unit: 3504

Claim 20 is considered to be provisionally rejectable over the claimed subject matter of application serial number 08/447,757, as described in the office action mailed 04/25/96.

Claims 19, 32 and 40, as understood, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claimed disclosure of application serial number 08/322,357 in view of Habegger, as described in the office action mailed 04/25/96

#### **RESPONSE TO REMARKS**

Applicant's arguments with respect to claims 17-49 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's arguments filed 08/29/96, with respect to the obviousness-type double patenting rejections have been fully considered but they are not deemed to be persuasive.

Applicant argues that the specific angles for interlocking and for facilitating manufacture of the blocks are not disclosed in the cited applications, nor in the cited reference. This point is irrelevant since limitations directed to a specific angle for interlocking and a specific angle for facilitating

Serial Number: 08/434,779

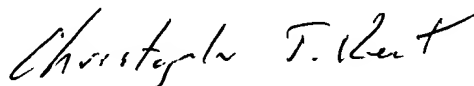
-6-

Art Unit: 3504

manufacture are not present in the claims. Applicant has claimed the side surfaces of the protrusions as merely "angled to interlock" and "angled to facilitate manufacture". Without further limitation, these angles are considered to be met by any angle (90 degrees included) which would not prevent these functions. The cited applications and reference are, therefore, considered to meet these angle requirements.

Any inquiry concerning this communication should be directed to Christopher Kent at (703) 308-2497.

Christopher T. Kent  
November 21, 1996



**CHRISTOPHER T. KENT  
PATENT EXAMINER  
GROUP 3620**